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American Whitewater's Comments on the USFS Report titled "Capacities on other Wild and Scenic Rivers: seven case studies"

Respectfully Submitted on May 7, 2007

American Whitewater has reviewed the report titled: "Capacities on other Wild and Scenic Rivers: seven case studies."

The case studies in the Report were purportedly selected from hundreds of Wild and Scenic River reaches because of their "similarities to issues on the Upper Chattooga." While there are some similarities and some differences between these cases studies and the upper Chattooga, it is important to remember that the purpose of the upper Chattooga capacity analysis is to determine *if* there are *any* issues on the Chattooga that warrant management, and if so what they are. The assumption going into the analysis should be that there are no issues – past, present, or likely once use is restored – relating to whitewater boating on the Upper Chattooga. What should be assumed is that there may be some resource and/or recreational impacts associated with past, present, or potential management that may require a change in management direction. With several exceptions, these case studies confirm that non-commercial, day-use, whitewater boating is seldom singled out for any management action or limits, and when it is, those limits are based on sound data and equitably applied to other users as well. The exceptions, the Upper Rogue, N Umpqua, and Kern "Forks", are simply anomalies. Each is very different from the upper Chattooga, and each has significant problems that may render the boating limitations illegal or inconsistent with the WSR or other regulatory guidance. Our interests rest in finding solutions on the upper Chattooga which are consistent with river management on a national scale.

Given that very few WSRs in this country have limitations on primitive day-use non-commercial floating, the selected rivers surveyed in the Report does not paint an accurate picture of national river management because it surveys nearly as many rivers with limits as it does rivers without limits. In fact, limitations are so rare, that a more appropriate study might attempt to discover why a handful of rivers (three or less) have parted from the overwhelming WSR management standard which is to *not* limit (much less ban) this form of primitive floating.

Notwithstanding that the Report is unrepresentative of national WSR management, the report is informative on a number of issues. We respectfully offer certain specific comments to the Report which we set forth below. In these comments

we will point out some similarities and differences between the selected reaches and the upper Chattooga that are not readily apparent in the Report. We will also address the impacts and context of the management actions carried out on each river. We respectfully request that you revise the Report where applicable to reflect the comments in this letter.

Report Omission

The Report is deficient in that it does not contain one or more case studies addressing recreational and ecological management of Wild and Scenic Rivers as they pass through private lands. This is a critical issue on the Chattooga in need of guidance, and we ask that the Report be revised to include this topic. A significant portion of the Chattooga Cliffs Section of the Chattooga Wild and Scenic River flows through private lands. The river at its uppermost access point is posted with menacing No Trespassing signs. Other WSRs are typically posted with large “Welcome” signs. The USFS has totally eliminated recreation (a designated ORV) from this section of the river, has not managed the other ORVs, and has not entered or studied this section of river as part of the user capacity analysis. We have brought this issue up repeatedly, and yet there are no case studies in the Report addressing private lands as they affect the right to float and the rights of the USFS to manage for all ORVs. Are there other examples of where the USFS and the public have essentially been locked out of a designated Wild and Scenic River by private landowners? Alternately, are there examples of situations where the USFS has resolved such issues in a manner that has resulted in active management and protection of the ORVs? Who manages floating on Wild and Scenic Rivers as the flow through private lands: the federal managing agency or the private landowner as limited by state navigability laws?

Comments Regarding the Report’s Introduction

The preliminary conclusions bulleted in the Introduction fail to mention or comply with overarching guidance from the Wilderness Act, the Wild and Scenic Rivers Act and Forest Service Policy guidance documents – which all provide specific direction on how capacity related issues should be addressed. It is clear that several of the case studies which exhibit extreme use limitations are the rare cases in which these policy mandates were pushed to - or beyond - the limits of the regulations and were not challenged administratively or legally.

This section needs to more realistically depict the regulatory and legal arena in which capacity decisions are made – if it is to reach any conclusions at all. First, the Forest Service manual states that indirect limits to use should be exhausted before *any* direct limits are imposed. The Forest Service manual further provides that, in the drastic situations where data support use limitations, such limitations must be implemented in the least intrusive and most equitable way. Second, visitor freedom in Wilderness Areas should be maximized, and only limited when necessary following a specific process. Finally, important recreational values (such as boating on the Upper Chattooga) that lead

to2007.05.07 AW Case Study Comments Final WSR designation must be protected and/or enhanced on Wild and Scenic Rivers.

This section of the Report simply does not paint a complete picture of the decision space that managers operate in, the best management practices that make sense on rivers, or the appropriate processes managers use to gradually limit uses and manage specific impacts.

Comments Regarding Kern River

On all six of the SF Kern segments, and Segment 2 of the NF Kern, use is low due to rare optimal flows, logs, and perhaps other alternatives. Thus, to the extent the Kern is analogous to the upper Chattooga, it is the SF Kern and Segment 2 of the NF Kern that are most similar to the upper Chattooga (especially in light of how those segments are unique compared to the Kern river as a whole). Importantly, these analogous sections of the Kern have no limits on boating (at least none discussed in the Report).

Also, while the Report references certain “conflicts,”¹ on the four upper sections of the NF Kern, it is important to note that the FS does not limit private, noncommercial boating on those sections either.

The Forks section of the Kern, where boating limits are in place, is not analogous to the upper Chattooga. The Forks section is a remote multi-day paddling resource that requires camping – making it very different from the Upper Chattooga which is made up of three relatively short day trips.

Moreover, the boating “limits” on the Forks section relate to camping, not boating. The Forks of the Kern has a limit of 15 people per day. This limit is based on perceived camping capacity – not conflicts. The report also fails to mention that this limit has been highly contentious and does not meet the interests of the paddling community – since many have no desire to camp, but rather seek to float the entire reach in a single day. While American Whitewater disagrees with current limits placed on the Forks section for reasons outside the scope of the Report, those limits do not inform management of the upper Chattooga for the reasons stated above, namely that camping is not a logical limitation on use of the upper Chattooga.

¹ Any such conflicts are most likely attributable to commercial rafting use, which is not present on the Upper Chattooga. Thus any purported connection between “conflicts” on the Kern and “conflicts” on the upper Chattooga are unfounded. In addition, the only “conflicts” on the upper Chattooga are merely anecdotal and not supported by any record. The four reaches of the Upper NF Kern referred to as Segment 4 notes some “conflicts” including noise, crowding, and parking. These “conflicts” are symmetrical with the exception of noise which may be asymmetrical, however there is no indication of the severity of these interactions or capacity issues. We object to the Report stating that boating has caused conflicts including “competition for limited space on land and the river, and congested parking” since these are caused equally by all users. We also question the term “conflict” used in this context, since the severity of the interactions is not adequately described to justify calling them conflicts.

We do not approve of the following statement: “Establishing a numeric limit for the number of people who may launch in the Wilderness and Forks Run has significantly contributed to protecting the wilderness experience and biophysical resources.” Any limit on any use will reduce biophysical impacts and enhance the wilderness experience for whoever is allowed access – this is not unique to paddling. The Wilderness Act supports non-mechanized recreational use, and specifically paddling. Managers must strike a balance for visitors and the land based on the Wilderness Act and the WSRA. Limiting a low impact use to 15 people per day based on the faulty assumption that their use will require camping, while some other uses are essentially unlimited is not a success or good management that should become a model.

The concept of a formal “quiet zone” is likely not applicable to private boaters, however the concept of noise sensitivity may be a good educational topic for all backcountry users on the Upper Chattooga. Likewise, USFS educational efforts regarding recognizing and respecting private property may also be applicable on the upper Chattooga.

Comments Regarding Metolius River

This river has significant year-long overlapping angling and boating use which is not present on the upper Chattooga. Regardless, there are no problems or limitations on either use by the USFS. This may serve as a good example of a river with more recreational overlap than the Chattooga would have, yet still has no conflicts in an unlimited management setting.

Comments Regarding North Umpqua River

The N Umpqua is a very different river from the Upper Chattooga. First, it is roadside, providing angling and other access along its entire length, which is not discussed in the Report. Second, it is an extremely popular salmon and steelhead fishing destination – likely far exceeding the Chattooga in every measure of visitation. The terms often applied to the river are “combat fishing” or “shoulder to shoulder fishing.” The angling density is so great on the N Umpqua reaches that whitewater paddlers have been displaced – not the other way around. Absent (or with) a specific comparison of angling visitation, density, and capacity data for the two rivers, management actions on the N Umpqua and the Upper Chattooga should not be compared. They are not comparable resources.

Another major difference is that the N Umpqua is one of the few rivers boatable during times of regional low flows – which coincide with the intense peak fall angling season. The Upper Chattooga on the other hand is only boatable during high flows when angling use is likely to be lowest. Thus, the potential for conflict is far greater on the N Umpqua. The 30 year old voluntary closure on the N Umpqua has essentially acted as a warning to paddlers to expect extremely high angling use on a specific reach during a specific time window. This warning is educational and the knowledge of the angling use

encourages paddlers to seek alternatives. The closure aspect of the management may be less important in reducing conflict as its educational component.

The *voluntary* boating closures on the N Umpqua are unique in our experience. Our regional staff feels that the voluntary closures are generally followed by the paddling community, mostly because the angling use is so intense that paddling the river is not preferable to alternatives. Essentially, unlimited angling has displaced paddlers. Furthermore, there is no reference to real conflicts on the N Umpqua in the Report. The voluntary closures were not challenged administratively or legally by the paddling community to our knowledge and it is uncertain if they would pass either level of scrutiny.

Comments Regarding Pecos River

Boating on the Pecos River has not caused conflicts. The river receives low paddling use and relatively high levels of other uses. This is similar to the Upper Chattooga in that paddling use is likely to make up a miniscule portion of total use and therefore not the most critical use to target in management actions.

Comments Regarding Snake River

Hells Canyon is about as different from the Upper Chattooga as a river could be. It is a dam controlled, massive, multi-day, commercially rafted, desert river that is boatable every day of the year and has jet-boats speeding through the rapids. The Upper Chattooga differs in that paddling use will generally be day-use, use will not include commercial rafting, and flows rarely support paddling. Demand for the Upper Chattooga will be miniscule compared to demand for Hells Canyon for obvious reasons. Importantly, other uses on the Snake River are regulated based upon whether they will adversely impact primitive floating, which is recognized as an outstandingly remarkable recreation value of the river. With regard to the Snake River, the Forest Service has argued in federal court that high levels of *motorized* boating use should be allowed because it would not interfere with the important recreational value of hand-powered floating. Other potential uses of the upper Chattooga should similarly be measured against their potential impact on primitive floating, yet that impact is difficult to measure at this time given that all primitive floating is currently prohibited.

Comments Regarding Upper Rogue River

Perhaps the most important distinction between the upper Rogue and the upper Chattooga is that primitive floating recreation is not an Outstanding Remarkable Value on the Rogue under the Wild and Scenic Rivers Act. This differs from the Chattooga which was designated with a Recreation ORV based largely on the upper Chattooga's documented value as a whitewater boating destination. The USFS is obligated to protect and enhance paddling on the Upper Chattooga under the statute. On the Upper Rogue however, they must simply allow paddling use to occur so long as it does not impact the Rogue's ORVs. This is not mentioned in the Report.

Second, the Upper Rogue is not considered to be a whitewater resource at all. Essentially the USFS banned a use that did not even exist. This differs markedly from the upper Chattooga which has been congressionally recognized as a high quality whitewater paddling resource. The recent paddling descent of the Upper Chattooga corroborated these findings. Banning enjoyment of a high quality recreational use is very different than banning a use on a river for which there is virtually no demand.

Third, we would also like to address the management of wood in rivers in the context of both the upper Rogue and the upper Chattooga. Wood is one issue discussed in the Report relating to whitewater boating on the Rogue. Wood is a natural component of stream ecosystems, and is a natural part of the paddling experience. Paddlers that prefer remote, narrow, and/or steep sections of whitewater are highly skilled at assessing wood pieces and then either going over, under, or around them. When passage is impossible, portage is often accomplished in the river bed or on rocky shores. It is not considered an acceptable practice for paddlers to disturb the natural ecosystem by removing wood to facilitate passage. Banning paddling to protect logs though would be like banning hunting or hiking to prevent killing of non-game species. All that is needed to prevent log removal is a prohibition of log removal – and accompanying education. Obviously this issue becomes more complex on rivers that attract rafting use or high levels of unskilled users – but on Class IV and V kayaking streams the issue is simple.

Finally, the ban on paddling the Upper Rogue would never pass administrative or legal review and therefore it is not a good example. USFS policy is very clear that floating use should be allowed and not limited unless there is a defined conflict with other resource values at which time use should be limited equitably and first indirectly. Safety is also not an adequate reason for banning paddling, and as stated earlier neither is the mere possibility of unregulated removal of wood. There was no use, no capacity problems, no conflicts, etc. Simply put, this ban has no basis (which is where its similarity to the upper Chattooga ends).

Comments Regarding Wilson Creek

Wilson Creek is a relatively good case study to apply to the Chattooga. It is a modern plan from the same state as much of the Upper Chattooga. The plan recognizes and protects recreational enjoyment, while improving the quality of the recreational experiences for all users and protecting the river. The lower reaches are roadside which obviously differs from Chattooga, but the upper reaches and tributaries including Upper Wilson Creek, the Gragg Prong, North Harper Creek, and Lost Cove Creek are all nice class IV or V steep creeks in remote settings. There are no limits on paddling.

American Whitewater's Conclusions

These case studies exhibit a range of good management to marginal or bad management yet are all presented as good management. They are presented as having similarities to issues on the Chattooga but we are unaware of any real issues involving

paddlers on the Chattooga. Regardless, there are at least as many differences as similarities between the Chattooga and the rivers in the case studies. With that being said, there are definitely lessons to be learned from these case studies. Limiting non-commercial, day-use, low-use, severely flow limited whitewater boating is *extremely* rare on Wild and Scenic Rivers. The rare examples of this management presented in the case studies each represent questionable decision making. The Kern has a strict and unjustifiable limit based on false assumptions, the Rogue has a senseless ban on a mostly unrunnable section of river for reasons that would fail any scrutiny, and the N. Umpqua has a closure that is merely voluntary. We disagree with any assertion that these closures represent good or defensible river management. We also feel strongly that they have critical differences from the Chattooga that render them poor examples of potential solutions on the Chattooga. Other case studies however that are more similar to the Chattooga show that non-commercial, day-use, low-use, severely flow limited whitewater boating is wholly compatible with other uses and resource protection.

The Report is deficient in that it does not contain one or more case studies addressing recreational and ecological management of Wild and Scenic Rivers as they pass through private lands. This is a critical issue on the Chattooga in need of guidance, and we ask that the Report be revised to include this topic.

Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Colburn', with a stylized, flowing script.

Kevin Colburn